

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BL FEB 23 2005

Michael N. Milby, Clerk of Court

ROBERT MERRITT

§
§
§

VS.

HOME DEPOT INTERNATIONAL, INC.

CIVIL ACTION NO.

(JURY)

H - 05 - 588

NOTICE OF REMOVAL

TO THE HONORABLE COURT:

COMES NOW, HOME DEPOT U.S.A, INC., incorrectly sued as HOME DEPOT INTERNATIONAL, INC., and files this its Notice of Removal and would respectfully show as follows:

INTRODUCTION

1. Plaintiff, ROBERT MERRITT, filed suit in Cause No. 829756 in the County Civil Court at Law Number Four (4) of Harris County, Texas. Defendant, HOME DEPOT U.S.A., INC., was served with and first received notice of this suit on January 27, 2005, when Plaintiff served Defendant through CT Corporation System. Defendant has timely filed this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b).

NATURE OF THE SUIT

2. Plaintiff alleges that on December 14, 2004, he sustained injuries when he tripped on some banding material lying in an aisle way at The Home Depot Store located at 6810 Gulf Freeway, Houston, Harris County, Texas 77087.

3. This is a premises liability action wherein Plaintiff alleges that he suffered serious and permanent bodily injuries as a direct result of the occurrence caused by Defendant's negligence in failing to exercise reasonable care to protect invitees from

dangerous conditions that pose unreasonable risk of harm and which dangerous conditions Defendant knew of should have known.

BASIS FOR REMOVAL

4. Removal is proper because there is complete diversity of citizenship between Plaintiff and Defendant. Plaintiff is a citizen of the State of Texas. Defendant is not a citizen of the State of Texas. Defendant, HOME DEPOT U.S.A., INC., is a Delaware Corporation and its principal place of business is in Atlanta, Georgia.

5. The amount in controversy exceeds \$75,000.00 exclusive of interests, costs, and attorneys' fees.

VENUE AND JURISDICTION

6. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

7. This Court has jurisdiction of this action by virtue of the provisions of 28 U.S.C. §1332 in that this is a case of diversity of citizenship between the parties with the amount in controversy exceeding \$75,000.00, exclusive of interest and costs.

**DEFENDANT'S NOTICE OF REMOVAL
IS PROCEDURALLY CORRECT**

8. All Defendants who have made an appearance join in the removal of this action.

9. Defendant has attached to this notice, all process, pleadings and orders served upon Defendant in the state court action as required by 28 U.S.C. §1446(a). (See attached Exhibit A).

10. Defendant has attached to this notice the documents as required by Local Rule CV-3(a).

JURY DEMAND

11. Defendant, HOME DEPOT U.S.A., INC., makes demand for a jury trial in this Honorable Court.

NOTICE TO STATE COURT

12. Defendant will promptly file a copy of this Notice of Removal with the Clerk of the state court in which this action has been pending.

Respectfully submitted by,



A. SCOT CHASE
SBN 04148550

ATTORNEY-IN-CHARGE FOR DEFENDANT
OF COUNSEL:

KAROTKIN, CHASE & ERWIN, L.L.P.
3555 Timmons Lane, Suite 850
Houston, Texas 77027
(713) 963-0533
FAX (713) 963-0544

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing pleading was duly served upon all parties or their counsel of record by facsimile, messenger or by placing same in the United States Mail, postage prepaid, to the individuals listed below, on this 23rd day of February 2005, and a true copy of said pleading was promptly filed in the office of the United States District Court for the Southern District of Texas – Houston Division together with this proof of service.

Ryan K. Brent
Vasquez & Sammons, L.L.P.
440 Louisiana, Suite 1440
Houston, TX 77002

VIA FAX (713) 425-7210



A. SCOT CHASE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT MERRITT

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§
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VS.

CIVIL ACTION NO. _____
(JURY)

HOME DEPOT INTERNATIONAL, INC.

INDEX OF MATTERS BEING FILED

TO: THE CLERK OF THE SOUTHERN DISTRICT COURT OF TEXAS, HOUSTON DIVISION

Pursuant to Rule 81 of the Local Rules of the Southern District of Texas, Defendant, HOME DEPOT U.S.A., INC., incorrectly sued as HOME DEPOT INTERNATIONAL, INC., attaches this Index of Matters Being Filed to their Notice of Removal.

1. Plaintiffs' Original Petition from State Court Action
2. Defendant's Original Answer from State Court Action
3. List of Counsel of Record

646118

829756

CAUSE NO. _____

ROBERT MERRITT,

Plaintiff,

IN THE CIVIL COUNTY COURT

VS.

AT LAW NO. _____

C.C.C.L. #4

HOME DEPOT INTERNATIONAL, INC.,

Defendant.

HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now, ROBERT MERRITT, ("Plaintiff"), complaining of Defendant, HOME DEPOT INTERNATIONAL, INC., ("Defendant") and for cause of action would respectfully show the Court and Jury as follows:

I.

DISCOVERY CONTROL PLAN

Plaintiff intends discovery in this case be conducted under the provisions of Texas Rule of Civil Procedure 190.4 (Level 3). Plaintiff respectfully requests that the Court enter a Level 3 Discovery Order setting forth: (i) a date for trial; (ii) a discovery period during which either all discovery must be conducted or all discovery requests must be served; (iii) deadlines for amending or supplementing pleadings; and (iv) deadlines for designating expert witnesses.

II.

PARTIES

Plaintiff, ROBERT MERRITT, is a resident citizen of Harris County, Texas.

① R-10
Jury

Defendant, HOME DEPOT INTERNATIONAL, INC., is a foreign corporation doing business in the State of Texas and may be served with citation by serving its registered agent, to wit: C.T. Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

To the extent that Defendant is conducting business pursuant to a trade name or assumed name, then suit is brought against them pursuant to the terms of Rule 28, Texas Rules of Civil Procedure, and Plaintiff hereby demands that upon answering this suit, that they answer in their correct legal name and assumed name.

III.

VENUE

Venue is proper in Harris County, Texas because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

IV.

BACKGROUND

This lawsuit arises out of severe and permanent injuries and damages sustained by Plaintiff on or about December 14, 2004 at approximately 11:15a.m. On that date, Plaintiff was an invitee at the Home Depot #6509, located at 6810 Gulf Freeway, Houston, TX 77087, which is owned and/or occupied by Defendant. Defendant's acts and/or omissions were a proximate cause of Plaintiff's injuries and damages in their capacity as premises owner, premises occupier, and/or the creator of a dangerous condition.

V.

CAUSE OF ACTION

The evidence will show that Defendant, as premises owner and/or occupier, had the duty to exercise reasonable care to protect invitees, such as the Plaintiff, from dangerous conditions on the premises which posed an unreasonable risk of harm to the Plaintiff, of which Defendant knew or should have known. The evidence will show that Defendant breached these duties. These acts and omissions constitute negligence under Texas law, and such negligence was a proximate cause of the occurrence in question, and Plaintiff's resulting injuries and damages.

VI.

DAMAGES

As a result of the incident in question, Plaintiff has incurred personal injuries, mental anguish, lost wages, physical pain and suffering, medical expenses, and physical impairment. Furthermore, Plaintiff will in all reasonable likelihood continue in the future, to incur damages for mental anguish, lost earning capacity, physical pain and suffering, medical expenses, and physical impairment. Plaintiff seeks all legally recoverable damages, actual and special under Texas law, including costs of court, exemplary damages, and pre-judgment and post-judgment interest, if any. Plaintiff's damages at this time are in excess of the minimum jurisdictional limits of this Court.

VII.

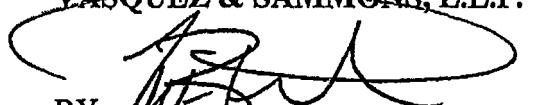
JURY DEMAND

Plaintiff respectfully demands a jury trial and herewith tenders the appropriate fee.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon final trial that she have judgment against such Defendant for her damages as specified above, pre-judgment and post-judgment interest at the legal rate, for her costs of Court, and for such other and further relief to which she may be justly entitled under the facts and circumstances.

Respectfully submitted,

VASQUEZ & SAMMONS, L.L.P.

BY: 

Ryan K. Brent
TBN: 24040571
440 Louisiana, Suite 1440
Houston, Texas 77002
Tel.: (713) 425-7200
Fax: (713) 425-7210

ATTORNEYS FOR PLAINTIFF

NO. 829756

ROBERT MERRITT § IN THE COUNTY COURT AT
VS. § LAW NUMBER FOUR (4) OF
HOME DEPOT INTERNATIONAL, INC. § HARRIS COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, HOME DEPOT U.S.A., INC., incorrectly sued as Home Depot International, Inc., Defendant in the above-entitled and numbered cause and files this its Original Answer to Plaintiff's Original Petition, and in support thereof, would respectfully show unto the Court the following:

I.

Subject to such admissions and stipulations as may hereafter be made, Defendant denies generally the allegations contained in Plaintiff's Original Petition, and calls upon the Plaintiff to prove such allegations by a fair preponderance of the evidence, as required by the Constitution and Laws of the State of Texas.

II.

Defendant hereby demands a trial by jury, the fee for which has previously been tendered by Plaintiff's attorney on January 10, 2005.

WHEREFORE, PREMISES CONSIDERED, Defendant, HOME DEPOT U.S.A., INC., prays for judgment that Plaintiff take nothing by reason of this suit, that Defendant recover its costs, and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

KAROTKIN, CHASE & ERWIN, L.L.P.

By: 

A. SCOT CHASE
SBN 04148550
3555 Timmons Lane, Suite 850
Houston, Texas 77027
(713) 963-0533
FAX (713) 963-0544

ATTORNEYS FOR DEFENDANT,
HOME DEPOT U.S.A., INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all counsel of record pursuant to Rule 21a, Tex. R. Civ. P., on this 18TH day of February 2005.

Ryan K. Brent
Vasquez & Sammons, L.L.P.
440 Louisiana, Suite 1440
Houston, TX 77002

VIA FAX (713) 425-7210


A. SCOT CHASE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT MERRITT

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VS.

CIVIL ACTION NO. _____
(JURY)

HOME DEPOT INTERNATIONAL, INC.

LIST OF COUNSEL OF RECORD

TO: THE CLERK OF THE SOUTHERN DISTRICT COURT OF TEXAS, HOUSTON DIVISION.

Pursuant to the Local Rules of the Southern District of Texas, Rule 81(6), Defendant, HOME DEPOT U.S.A., INC., incorrectly sued as HOME DEPOT INTERNATIONAL, INC., files this List of Counsel of Record:

1. Ryan K. Brent
VASQUEZ & SAMMONS, L.L.P.
440 Louisiana, Suite 1440
Houston, TX 77002
(713) 425-7200
FAX (713) 425-7210

Mr. Brent is counsel for Plaintiff, ROBERT MERRITT.

2. A. Scot Chase
KAROTKIN, CHASE & ERWIN, L.L.P.
3555 Timmons Lane, Suite 850
Houston, TX 77027
Phone (713) 963-0533
FAX (713) 963-0544

Mr. Chase is counsel for Defendant, HOME DEPOT, U.S.A., INC.

Respectfully Submitted,

By: 
A. SCOT CHASE
SBN 04148550

ATTORNEY-IN-CHARGE FOR DEFENDANT

OF COUNSEL:

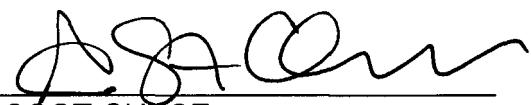
KAROTKIN, CHASE & ERWIN, L.L.P.
3555 Timmons Lane, Suite 850
Houston, Texas 77027
(713) 963-0533
FAX (713) 963-0544

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing pleading was duly served upon all parties or their counsel of record by facsimile, messenger or by placing same in the United States Mail, postage prepaid, properly addressed to the individuals listed below, on this 23rd day of February 2005, and a true copy of said pleading was promptly filed in the office of the United States District Court for the Southern District of Texas – Houston Division together with this proof of service.

Ryan K. Brent
Vasquez & Sammons, L.L.P.
440 Louisiana, Suite 1440
Houston, TX 77002

VIA FAX (713) 425-7210



A. SCOT CHASE

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

CIVIL COVER SHEET

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
HILTON HEAD ISLAND, SOUTH CAROLINA

I (a) PLAINTIFFS

ROBERT MERRITT

HOME DEPOT INTERNATIONAL, INC.
BL FEB 23 2005

H-05 - 588

Michael N. Milby, Clerk of Court

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Harris
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Georgia
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Ryan K. Brent (713) 425-2700
Vasquez & Sammons. L.L.P.
440 Louisiana, Suite 1440
Houston, TX 77002

ATTORNEYS (IF KNOWN)

A. Scot Chase (713) 963-0533
Karotkin, Chase & Erwin, L.L.P.
3555 Timmons Lane, Suite 850
Houston, TX 77027

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

U.S.C. §1332

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce/ICC Rates/etc	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Rigs	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 160 Stockholders Suits	<input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 875 Customer Challenge	
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 620 Copyrights	<input type="checkbox"/> 12 USC 3410	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 630 Patent	<input type="checkbox"/> 891 Agricultural Acts	
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 651 HIA (1965)	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 662 Black Lung (923)	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 663 DWC/DWV (405(g))	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 664 SSDI Title XVI	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 665 RSI (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes	
<input type="checkbox"/> 250 All Other Real Property		<input type="checkbox"/> LABOR	<input type="checkbox"/> 890 Other Statutory Actions	
		<input type="checkbox"/> 710 Fair Labor Standards Act		
		<input type="checkbox"/> 720 Labor/Mgmt. Relations		
		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act		
		<input type="checkbox"/> 740 Railway Labor Act		
		<input type="checkbox"/> 790 Other Labor Litigation		
		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		
		<input type="checkbox"/> FEDERAL TAX SUITS		
		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)		
		<input type="checkbox"/> 871 IRS - Third Party		
		<input type="checkbox"/> 28 USC 7809		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District
 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: YES NOVIII. RELATED CASE(S) (See instructions):
IF ANYJUDGE Roberta LloydDOCKET NUMBER 829756DATE 2/23/2005

SIGNATURE OF ATTORNEY OF RECORD



A. SCOT CHASE

KAROTKIN, CHASE & ERWIN, L.L.P.

ATTORNEYS AT LAW

3555 TIMMONS LANE, SUITE 850
HOUSTON, TEXAS 77027

(713) 963-0533
FAX (713) 963-0544

DON KAROTKIN *
A. SCOT CHASE *
R. HARDING ERWIN, JR

PEGGY R. BAN
LADDIE LIVINGSTON
SUSAN M. MARETT
LAUREN S. MATTIUZZI
PHILIP A. SELLERS

* Board Certified—Personal Injury Trial Law

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
BL FEB 23 2005
Michael M. Milby, Clerk of Court

February 23, 2005

Michael Milby
U.S. Deputy Clerk
515 Rusk
Houston, TX 77002

VIA HAND DELIVERY

H - 05 - 588

RE: C.A. No. _____; *Robert Merritt vs. Home Depot International, Inc.*; In the United States District Court of Southern DisTexas

Dear Mr. Milby:

Enclosed for filing in the above-referenced matter please find **DEFENDANT'S NOTICE OF REMOVAL**. Also enclosed is our firm check in the amount of \$250.00 to cover the cost of filing.

Please file stamp the extra copy of these pleadings and return them to the undersigned in the enclosed stamped, self-addressed envelope as proof of filing.

Thank you for your assistance in this matter.

Very truly yours,

KAROTKIN, CHASE, & ERWIN, L.L.P.



A. Scot Chase

ASC:cas
Enclosures
524.2210\corfed clerk

cc: Ryan K. Brent
Vasquez & Sammons, L.L.P.
440 Louisiana, Suite 1440
Houston, TX 77002

VIA FAX (713) 425-7210